

Clance Sidney ALEXANDER *v.* STATE of Arkansas

CR 76-133

545 S.W. 2d 606

Opinion delivered December 20, 1976

(In Banc)

[Rehearing denied February 7, 1977.]

1. APPEAL AND ERROR — PRELIMINARY MOTIONS — JURISDICTION FOR REVIEW. — Where a case is still pending in the circuit court, an appeal denying a preliminary motion for permission of counsel to withdraw and a motion requesting that prosecuting attorneys, circuit judges, and circuit clerks be summoned to testify concerning the death penalty must be dismissed for want of a final judgment in view of Ark. Stat. Ann. § 27-2101 (Supp. 1975) limiting the jurisdiction of the Supreme Court to the review of final judgments and decrees.
2. APPEAL AND ERROR — APPELLATE JURISDICTION — ATTEMPTED ENLARGEMENT OF — FINAL JUDGMENT, NECESSITY OF. — The trial court's attempt to enlarge the jurisdiction of the Supreme Court by reciting in its order denying preliminary motions that the rulings are final for the purpose of appellate review or, alternatively, that the defendant should be allowed an interlocutory appeal, must fail, because the limitation of the Supreme Court's jurisdiction to the review of final judgments and decrees is statutory.

Appeal from Crittenden Circuit Court, *Gerald Pearson*, Judge; appeal dismissed.

*W. Palma Rainey*, of *Rubens, Rubens & Rainey*, for appellant.

*Jim Guy Tucker*, Atty. Gen., by: *Joseph H. Purvis*, Asst. Atty. Gen., for appellee.

GEORGE ROSE SMITH, Justice. This capital felony case has not yet been tried. Two preliminary motions were filed, one asking that *W. Palma Rainey* be allowed to withdraw as appointed counsel and the other that all prosecuting attorneys, circuit judges, and circuit clerks be summoned to testify concerning the death penalty. The trial court denied both motions, its order reciting that the rulings are final for the purpose of appellate review or, alternatively, that the defendant should be allowed an interlocutory appeal.

Inasmuch as the case is still pending below, the appeal must be dismissed for want of a final judgment, a point which this court itself raises. *H.E. McConnell & Son v. Sadle*, 248 Ark. 1182, 455 S.W. 2d 880 (1970). The trial court's attempt to enlarge our jurisdiction must fail, because the limitation of our jurisdiction to the review of final judgments and decrees is statutory. Ark. Stat. Ann. § 27-2101 (Supp. 1975).

Appeal dismissed.

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